

**BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

MICHELLE ROBINSON, BOX BUTTE )  
COUNTY ASSESSOR, )  
 )  
Appellant, )  
 )  
v. )  
 )  
BOX BUTTE COUNTY BOARD OF )  
EQUALIZATION )  
 )  
and )  
 )  
GLENN & SHEILA KING, )  
 )  
Appellees. )

Case No. 09A 008

DECISION AND ORDER  
REVERSING THE DECISION OF  
THE BOX BUTTE COUNTY BOARD OF  
EQUALIZATION

The above-captioned case was called for a hearing on the merits of an appeal by Michelle Robinson, Box Butte County Assessor ("County Assessor"), to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 301 W Hwy 26, Scottsbluff, Nebraska, on June 1, 2010, pursuant to an Order for Hearing and Notice of Hearing issued February 26, 2010. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

Michelle Robinson, Box Butte County Assessor, was present at the hearing. James L. Zimmerman appeared as legal counsel for the County Assessor.

No one was present on behalf of, or as legal counsel for the Box Butte County Board of Equalization ("the County Board").

Neither Glenn or Sheila King (“Taxpayers”) were present at the hearing. No one appeared as legal counsel for the Taxpayers.

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Reissue 2009). The final decision and order of the Commission in this case is as follows.

## **I. ISSUES**

The County Assessor has asserted that taxable value of the subject property as of January 1, 2009, is greater than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining taxable value of the subject property is unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2009.

## **II. FINDINGS OF FACT**

The Commission finds and determines that:

1. The County Assessor may maintain the appeal.
2. The parcel of real property to which this appeal pertains ("the Subject Property") is described in the table below.

3. Taxable value of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Box Butte County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: SE¼ Section 33, Township 28, Range 50, Box Butte County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$102,350.00	\$72,915.00	\$90,000.00
Total	\$102,350.00	\$72,915.00	\$90,000.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on February 26, 2010, set a hearing of the appeal for June 1, 2010, at 8:00 a.m. MDST.
6. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. Taxable value of the subject property as of the assessment date for the tax year 2009 is:

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Agricultural land    \$ 102,350.00

Total                    \$ 102,350.00.

**III.**  
**APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Reissue 2009).

2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2009).
3. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2009).
4. “Actual value, market value, and fair market value mean exactly the same thing.”  
*Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009).
6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).
7. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

8. Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).
9. "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:
  - (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
  - (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land." Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).
10. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
11. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, an appellant has the burden to prove

that action by a board of equalization, fixing or determining valuation of real estate for tax purposes, is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).

12. The presumption disappears if there is competent evidence to the contrary. *Id.*
13. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2008).
14. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
15. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
16. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
17. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).

18. “An owner who is familiar with his property and knows its worth is permitted to testify as to its value.” *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
19. The County Board need not put on any evidence to support its valuation of the property at issue unless the appellant establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
20. An appellant, who only produced evidence that was aimed at discrediting valuation methods utilized by the County Board, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
21. An appellant must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965).

#### **IV. ANALYSIS**

The subject property is an unimproved parcel used for agricultural and horticultural purposes, primarily as irrigated crop land. (E2:2). Taxable value of the parcel as determined by the County Assessor was \$102,350.00. (E1:1). Taxable value as determined by the County Board is \$90,000. (E1:1). The Taxpayers have a basis for their protest stated that the subject

property was poorer land than another parcel owned by them. (E2:4). The Taxpayers also asserted that the comparison parcel had a lower taxable value. (E2:4). In addition, the Taxpayers contended that percentage increase in taxable value of the subject property was greater for tax year 2009 than value for the comparison parcel. (E2:4).

The subject property is the SE $\frac{1}{4}$  Section 33, Township 28, Range 50, Box Butte County, Nebraska. (E1:1). The map number assigned to the subject property shows that it is located in geo code 0851. (E2:1). The comparison parcel is the NE $\frac{1}{4}$  Section 4, Township 27, Range 50, Box Butte County, Nebraska. (E2:4). The map number assigned to the comparison parcel shows that it is in geo code 1093. (E2:9). Agricultural land and horticultural land in Box Butte County is valued using 4 neighborhoods or market areas. (E3:1). The subject property in geo code 0851 lies in neighborhood 1. (E3:1). The comparison parcel in geo code 1093 lies in neighborhood 2. (E3:1). Locations of the subject property and the comparison parcel can also be found on Exhibit 5 page 1. On examination of page 1 of Exhibit 5 it is apparent that the subject property is to the north of and adjacent to the comparison parcel.

Taxable value of the subject property as determined by the County Assessor for tax year 2009 was \$102,350.00 (E2:1). Taxable value of the comparison parcel as determined by the County Assessor for tax year 2009 was \$72,915. (E2:9). The taxable value of both parcels was determined by the County Assessor using a formula based on uses such as irrigated cropland, dry cropland, grassland etc. with values assigned to LVGs assigned to each use. LVGs are in turn determined based on soil classifications and an assignment of each soil class to an LVG as mandated by the Property Tax Administrator in Directive 99-8 issued December 30, 1999. The land uses, LVG codes, acres in an LVG, and contribution to value of land in an LVG, as assigned

to various soils classifications for the subject property and the comparison parcel as found on Exhibit 2 page 8 for the subject property and Exhibit 2 page 10 for the comparison parcel are as follows:

Land Use		LVG Code		Acres		Value	
Subject	Comparison	Subject	Comparison	Subject	Comparison	Subject	Comparison
Dry	Dry	1D	1D	15.98	9	4,075	3,150
	Dry		2D		4		1,200
	Dry		3D		2		450
Dry	Dry	4D1	4D1	3	4	435	900
Dry		4D		1		125	
	Grass		4G1		5		700
Irrig	Irrig	1A	1A	99	49	79,200	29,155
Irrig	Irrig	2A	2A	6	54	3,600	28,620
Irrig	Irrig	4A1	4A1	28	28	14,000	8,680
Irrig		4A		1		300	
Shlt		1051		3		555	
Waste		600	600	3	3	60	60
Road			1500		2		0
Total				159.98	160	102,350	72,915

The comparison shows that the subject property has more acres of 1A land and more acres of 1D land. The subject property as shown by the comparison is a “better” parcel than the comparison parcel. Even though the subject parcel is a “better” parcel than the comparison parcel the differences in taxable values is \$29,435 (\$102,350 - \$72,915). The difference in taxable values is not explained by the differences in quality of the two parcels. The difference in values is explained by the values assigned to LVGs in neighborhood, market area 1 as opposed to the values assigned to the same LVGs in neighborhood, market area 2 as shown in Exhibit 4 page 1. For example, the value per acre assigned to 1A land in market area 1 is 800 and 595 in market area 2.

A market area constitutes a subclass of real property. See *Vanderheiden v. Cedar County Board of Equalization*, 16 Neb.App. 578, N.W.2d 717 (2008). A class or subclass of real property is a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to, the classifications of agricultural land or horticultural land listed in section 77-1363 of Nebraska Statutes, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land. A class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it affects the actual value of properties not within the market characteristic class or subclass. Neb. Rev. Stat. §77-103.01 (Reissue 2003). The classes and subclasses of agricultural land and horticultural land designated in section 77-1363 are irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards. Neb. Rev. Stat. §77-1363 (Cum. Supp. 2006). Other classes may be developed so that the categories reflect uses appropriate for the valuation of agricultural land and horticultural land. *Id.* Nothing in section 77-1363 is to be construed to limit the classes or subclasses of real property that may be used to achieve more uniform and proportionate valuation. *Id.*

Market areas used to value agricultural land and horticultural land in Box Butte County for tax year 2009 are shown in Exhibit 3 at page 1, Exhibit 5 page 1, and the 2009 Reports and Opinion of the Property Tax Administrator for Box Butte County at page Exhibit 07A page 1. The 2009 Reports and Opinion of the Property Tax Administrator for Box Butte County also contains overlays and a base map that show soil classes, geo code area, and the locations of wells

pumping > 500GPM at pages 07A page 2, 3, and 4. The County Assessor testified that the market area was established by her predecessor in office and that she has maintained them. Examination of the map and overlays contained in the 2009 Reports and Opinion of the Property Tax Administrator for Box Butte County shows differences in soil classes and intensity of irrigation based on wells between market areas 1 and 2. Market area 3 contains the City of Alliance. Market area 4 has soil classes that are like market area 2 but has little irrigation. Market areas in Box Butte County are based on characteristics that could affect value. The County Assessor testified that in fact prices paid for agricultural and horticultural land varies across the three market areas. The differences in prices are reflected in the values per LVG as shown in Exhibit 4.

In this case the line separating market areas 1 and 2 runs between the subject property and the comparison parcel. The recognition of market areas necessarily implies that the area will have boundaries. At the boundaries there will be differences between values assigned to adjoining parcels if there is a valid basis for the market areas. The valuation difference is akin that experienced by owners of parcels on each side of county lines. The value differences between the subject property and the comparison parcel are influenced by the greater proportion of 1A land, the highest valued LVG, in the subject property. The value differences shown in taxable value as determined by the County Assessor are explainable and permissible.

Taxable value of the subject property as determined by the County Board is less than taxable value as determined by the County Assessor and greater than taxable value of the comparison parcel. There is no discernable basis for the determination of taxable value made by the County Board. The decision of the County Board is arbitrary. Taxable value as determined

by the County Assessor is based on a formula and system regularly applied to all agricultural land and horticultural land in Box Butte County. There is no other competent evidence of taxable value.

A prior years taxable value is not relevant to a determination of value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944); *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 428 N.W.2d 201 (1988). If a prior years value is not relevant to the determination of value in a subsequent year, it follows that the percentage increase in value from one year to the next is likewise not relevant.

Taxable value of the subject property for the tax year 2009 is that value determined by the County Assessor.

## V. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The County Assessor has produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. The County Assessor has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2009, is vacated and reversed.
2. Taxable value, for the tax year 2009, of the subject property is:

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Agricultural land	\$ 102,350.00
Total	<u>\$ 102,350.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Box Butte County Treasurer, and the Box Butte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2009.
7. This order is effective for purposes of appeal on July 14, 2010.

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Nancy J. Salmon, Commissioner

**SEAL**

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**

I concur in the result.

The analysis above considers two standards of review for review. One standard of review is stated as a presumption found in case law, the other is found as stated in statute. I do not believe consideration of two standards of review are required by statute or case law.

The Commission is an administrative agency of state government. See *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000). As an administrative agency of state government the Commission has only the powers and authority granted to it by statute. *Id.* The Commission is authorized by statute to review appeals from decisions of a county board of equalization, the Tax Commissioner, and the Department of Motor Vehicles. Neb. Rev. Stat. §77-5007 (Supp. 2007). In general, the Commission may only grant relief on appeal if it is shown that the order, decision, determination, or action appealed from was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8) (Cum. Supp. 2008).

The Commission is authorized to review decision of a county board of equalization determining taxable values. Neb. Rev. Stat. §77-5007 (Supp. 2007). Review of county board of equalization decisions is not new in Nebraska law. As early as 1903 Nebraska Statutes provided for review of County Board assessment decisions by the district courts. Laws 1903, c. 73 §124. The statute providing for review did not state a standard for that review. *Id.* A standard of review stated as a presumption was adopted by Nebraska's Supreme Court. See *State v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902) (citing *Dixon Co. v. Halstead*, 23 Neb. 697, 37 N.W. 621 (1888) and *State v. County Board of Dodge Co.* 20 Neb. 595, 31 N.W. 117 (1887). The presumption was that the County Board had faithfully performed its official duties and had acted

upon sufficient competent evidence to justify its actions. See *id.* In 1959, the legislature provided a statutory standard for review by the district courts of county board of equalization, assessment decisions. 1959 Neb Laws, LB 55, §3. The statutory standard of review required the District Court to affirm the decision of the county board of equalization unless the decision was arbitrary or unreasonable or the value as established was too low. *Id.* The statutory standard of review was codified in section 77-1511 of the Nebraska Statutes. Neb. Rev. Stat. §77-1511 (Cum. Supp. 1959). After adoption of the statutory standard of review Nebraska Courts have held that the provisions of section 77-5011 of the Nebraska Statutes created a presumption that the County Board has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. See, e.g., *Ideal Basic Indus. V. Nuckolls Cty. Bd. Of Equal.*, 231 Neb. 653, 437 N.W.2d 501 (1989). The presumption stated by the Court was the presumption that had been found before the statute was enacted.

Many appeals of decisions made pursuant to section 77-1511 were decided without reference to the statutory standard of review applicable to the district courts review of a county board of equalization's decision. See, e.g., *Grainger Brothers Company v. County Board of Equalization of the County of Lancaster*, 180 Neb. 571, 144 N.W.2d 161 (1966). In *Hastings Building Co., v. Board of Equalization of Adams County*, 190 Neb. 63, 206 N.W.2d 338 (1973), the Nebraska Supreme Court acknowledged that two standards of review existed for reviews by the district court; one statutory requiring a finding that the decision reviewed was unreasonable or arbitrary, and another judicial requiring a finding that a presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence

was overcome. No attempt was made by the *Hastings* Court to reconcile the two standards of review that were applicable to the District Courts.

The Tax Equalization and Review Commission was created in 1995. 1995 Neb. Laws, LB 490 §153. Section 77-1511 of the Nebraska Statutes was made applicable to review of county board of equalization assessment decisions by the Commission. *Id.* In 2001 section 77-1511 of Nebraska Statutes was repealed. 2001 Neb. Laws, LB 465, §12. After repeal of section 77-1511 the standard for review to be applied by the Commission in most appeals was stated in section 77-5016 of the Nebraska Statutes. Section 77-5016(8) requires a finding that the decision being reviewed was unreasonable or arbitrary. *Brenner v. Banner County Board of Equalization*, 276 Neb. 275, 753 N.W.2d 802 (2008). The Supreme Court has stated that the presumption which arose from section 77-1511 is applicable to the decisions of the Commission. *Garvey Elevators, Inc. V. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

The possible results from application of the presumption as a standard of review and the statutory standard of review are: (1) the presumption is not overcome and the statutory standard is not overcome; (2) the presumption is overcome and the statutory standard is not overcome; (3) the presumption is not overcome and the statutory standard is overcome; (4) and finally the presumption is overcome and the statutory standard is overcome. The first possibility does not allow a grant of relief, neither standard of review has been met. The second possibility does not therefore allow a grant of relief even though the presumption is overcome because the statutory standard remains. See *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The third possibility requires analysis. The presumption and the statutory standard of review are different legal standards, and the statutory standard remains after the presumption has

been overcome. See *id.* The burden of proof to overcome the presumption is competent evidence. *Id.* Clear and convincing evidence is required to show that a county board of equalization's decision was unreasonable or arbitrary. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002). Competent evidence that the county board of equalization failed to perform its duties or act upon sufficient competent evidence is not always evidence that the county board of equalization acted unreasonably or arbitrarily because the statutory standard of review remains even if the presumption is overcome. *City of York*, *supra*. Clear and convincing evidence that a county board of equalization's determination, action, order, or decision was unreasonable or arbitrary, as those terms have been defined, may however overcome the presumption that the county board of equalization faithfully discharged its duties and acted on sufficient competent evidence. In any event the statutory standard has been met and relief may be granted. Both standards of review are met in the fourth possibility and relief may be granted.

Use of the presumption as a standard of review has been criticized. See G. Michael Fenner, *About Presumptions in Civil Cases*, 17 Creighton L. Rev. 307 (1984). In the view of that author, the presumption should be returned to its roots as a burden of proof. *Id.* Nebraska's Supreme Court acknowledged the difficulty of using two standards of review and classified the presumption in favor of the county board of equalization as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. See *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987). Use

of the *Gordman* analysis allows consideration of both the presumption and the statutory standard of review without the difficulties inherent in the application of two standards of review. It is within that framework that I have analyzed the evidence.

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Wm. R. Wickersham, Commissioner